IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 378 of 2007
Date of Decision: 5.2.2007

Jagdish and another ...Appellants

Versus

Shiv Kumar ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Jai Vir Yadav, Advocate, for the appellant.

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for permanent injunction restraining the defendants from fixing any apertures, window, ventilators parnala on the first floor at point ABCD, was decreed.

Learned counsel for the appellants states that he does not dispute the judgment and decree to the extent of closing of one Parnala on the wall BC over the house of the plaintiff. However, in respect of ventilators in wall AB, it is contended that the ventilators were installed on the ground floor of the building somewhere in the year 1947 and it was thereafter that the plaintiff has raised construction over his property. Since the ventilators were in existence on ground floor, the ventilator on the first floor cannot be directed to be closed down.

However, the said argument is not tenable. A Division Bench of this Court in **Registered Society, Arya Priti Nidhi Sabha, Punjab Gurudatt Bhawan, Jullundur City and others v. Paras Ram, 1973 PLR 671**, has held that when a person opens a door in his own

wall, he does not do so in another man's land. It was further held that mere fact that somebody opens a door in his own wall, he does not, thereby interfere with the right of his neighbour to use his land without obstruction. The existence of the door, by itself, cannot, entitle the opener of the door to pass over the land of his neighbour as a matter of right, or trespass into it. Simply because a person has opened a door, he should be permitted by his neighbour to use it for going into or coming out of it. If the neighbour so likes, he can prevent him from using the door from the very first day and if the latter still insists on doing so, he will be guilty of criminal trespass.

In view of the aforesaid judgment, the plaintiff has a right to raise wall over his property which may or may not affect the ventilators opened by the defendants over their property. Thus, learned counsel for the appellants contends that in view of the said fact, the direction to the defendants in the impugned judgment and decree, to close the ventilators is unjustified.

In view of the above, I deem it appropriate to modify the judgment and decree of the Courts below and permit the appellants to raise construction over their property which may have the effect of closing the ventilators, windows, apertures and doors over the wall AB. Such order of modification of decree is passed as such aspect is not likely to affect any substantive right of the plaintiff. However, the decree in respect of removal of Patnala is maintained.

The appeal stands disposed of in the above terms.

05-02-2007 (HEMANT GUPTA)
ds JUDGE